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EXAMINER

ROBINSON, MARK A

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/621,131
Filing Date: July 16, 2003
Appellant(s): SCHMIDT, WILLIAM PAUL

Steven W. Hayes
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 9/8/06 appealing
from the Office action mailed 4/11/06.

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(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

No amendment after final has been filed.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

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(8) Evidence Relied Upon

6,636,822	Englander	10-2003
3,610,736	Bateman	10-1971
2,877,686	Foster	3-1959

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-3,6 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Englander (US 6636822) in view of either Foster (US 2877686) or Bateman (US 3610736).

Englander discloses a crossover or crossview mirror assembly for mounting on a front surface of a vehicle having a cab (see fig. 3), the mirror assembly meeting visual requirements set forth in FMVSS 111 (see col. 1) and comprising an arcuate mirror (mirror 22 is clearly arcuate due to the shown distortion) with frame and mounting support (clearly shown in fig. 3) coupled to the front of the vehicle.

Englander does not disclose a servomotor actuator controlled by an electronic controller assembly for swiveling the mirror along an x-axis about a center point to move the mirror clockwise or counterclockwise about the center point. However, these features are disclosed by both Foster (as

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discussed previously) and Bateman. With respect to Foster, note motor(M1,M2) and toggle-switch type controller (col. 3) which swivel the mirror along an x-axis about a tubular region center point (e.g. 19) along a horizontal plane (see fig. 3). With respect to Bateman, note motor(30) and toggle-switch type controller(39) which swivel the mirror along an x-axis about a tubular region center point (e.g. 24,25,etc.) along a horizontal plane. Note with respect to claims 6 and 7 that since the swiveling of Foster's and Bateman's mirrors is limited, a center position may be defined midway between the clockwise-most and counterclockwise-most limits. Note also that Foster shows the swiveling to be not greater than approximately 45 degrees (fig. 3) and that Bateman's limiting structure(33,34) limits swiveling to less than this value. It would have been obvious to the ordinarily skilled artisan at the time of invention to include the actuator and controller assembly of either Foster or Bateman with Englander's mirror since motorized adjustment of the mirror is more convenient and quicker than manual adjustment.

(10) Response to Argument

Regarding the arguments made on pages 5(last paragraph) to 8(first paragraph), it should be noted that these arguments are also present on pages 10-12 of the brief. These arguments will

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be addressed below with respect to claim 1.

Regarding claim 1, appellant has argued that the references used in the rejection do not teach all of the claimed limitations. Specifically, appellant argues that it is unclear if Englander includes a tubular region with center point, with the support coupled within the tubular region, and that the examiner does not address these items with respect to either Foster or Bateman.

First, it should be noted that this argument contradicts appellant's statement on page 7 of the brief, where it is acknowledged that the references, when combined, teach all of the claimed elements. Further, it should be noted that the examiner did address in the rejection the claimed tubular region and center point with respect to both Foster and Bateman. In Foster and Bateman, any tubed-shaped aperture or space (i.e. "region") which accommodates the shown tubular support rod or post about which the mirror pivots is considered to be the tubular region. Specifically, Foster shows many "tubular regions" which satisfy this claim limitation (e.g. items 19, 5, 6, 7, 8 or 9 all contain or constitute a tubular region located at the rotation center point). Bateman also shows many "tubular regions" which satisfy this claim limitation (e.g. items 23-25, along with the shaft-accommodating holes in frame

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12, all contain or constitute a tubular region located at the rotation center point). As noted in the rejection, a center point between the limits of rotation will necessarily be present at the tubular region (i.e. the center of rotation). Thus, these claimed limitations are met by the references.

Aside from the above, it should also be noted that the mirror frame shown in Englander fig. 3 probably does include a tubular region since the shown support is also tubular (i.e. the tubular support would seem to require accommodation in a tubular region of the housing). However, as this is not clearly shown in Englander, Foster and Bateman were relied upon for teaching this very well known arrangement.

Appellant has also argued that there is no motivation in Englander to combine the teachings of Foster or Bateman since Englander is merely concerned with testing of crossover mirrors.

In response, the points raised in the response to arguments of the final rejection should be repeated. That is to say, Englander discloses a crossover mirror whether or not this disclosure is of primary concern to Englander. The drawings of a reference are to be evaluated for what they reasonably disclose or suggest to the ordinarily skilled artisan, whether or not what is shown is either intended or explained in the specification. MPEP 2125. Figure 3 of this reference clearly

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shows a crossover mirror with support attached to the front surface of a vehicle (bus).

Motivation to combine the teachings of either Foster or Bateman with Englander may be found in either Foster or Bateman, or in the knowledge generally available to one having ordinary skill in the art. Clearly, the use of motorized adjustment of the mirror (as taught by Foster or Bateman) to replace manual activity is desirable since motorized adjustment is easier and more convenient as a driver would be able to control adjustment of the mirror from inside the vehicle (see Foster col. 3 lines 1-10; see Bateman col. 4 lines 6-16).

Concerning appellant's allegation of inaccurate or misleading statements by the examiner, the examiner would like to make the following points. First, the traversal of the motivation was not seen as being specific since appellant did not address the motivation set forth by the examiner in the rejection (and reproduced above).

Second, the statement by the examiner that motivation is not required to be found in the primary reference is in fact correct. This statement does not contradict section 2143 of the MPEP cited by appellant, wherein is found the requirement that motivation be present in the references themselves or in the knowledge available to those of ordinary skill in the art, not

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merely in the primary reference itself.

Lastly, appellant again argues the Englander is not concerned with the structure or movement of the mirror, but only with testing of the mirror for regulatory compliance. Thus, appellant believes that in combining the references, the examiner is solving a problem not present in Englander, since the only properly combinable references would be directed to improvements on Englander's method.

However, just because movement and/or structure of the mirror is not of primary concern to Englander, does not mean that the "problem" of an unadjustable mirror is not present in this reference. Although combining Foster or Bateman with Englander may not improve upon the testing method, such combination *would* save the vehicle driver from having to get out of his bus to adjust the mirror by hand.

Concerning claims 2,3,6 and 7, appellant has repeated the arguments made above. In response, the examiner's arguments are also repeated.


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For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,


MARK A. ROBINSON
PRIMARY EXAMINER

Conferees:

Drew Dunn 

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